

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER L. LYLES,

Plaintiff,

Case No. 1:10-cv-528

v.

Honorable Paul L. Maloney

DELORES CROSBY et al.,

Defendants.

ORDER

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. Plaintiff initially was granted leave to proceed *in forma pauperis* in this action by the Eastern District of Michigan. After the case was transferred, this Court discovered that Plaintiff has three strikes within the meaning of 28 U.S.C. § 1915(g). As a result, the Court vacated the order granting Plaintiff leave to proceed *in forma pauperis* and ordered him to pay the \$350.00 filing fee. On July 16, 2010, after Plaintiff paid the full filing fee, the Court issued an order requiring Plaintiff to file an amended complaint on the form provided by the Court as required by the local rules of this District. This matter now is before the Court upon Plaintiff's motion for leave to amend, to add additional defendants and for summary judgment on Counts IV and V (docket #5) and his motion to proceed with initial screening of his original complaint under the provisions of the Prison Litigation Reform Act (docket #25).

In his motion to proceed with screening of his original complaint (docket #25), Plaintiff makes the following three requests: (1) to strike his previous motion (docket #5); (2) to

proceed with initial screening of his original complaint; and (3) to receive a refund of \$22.92, the amount he paid in excess of the \$350.00 civil action filing fee.

The Court will grant Plaintiff's request to strike his earlier motion (docket #5). Plaintiff's second request, to proceed with initial screening of his original complaint, will be denied as moot because Plaintiff now has filed an amended complaint on the form as required by the Court's July 16 order. The amended complaint took the place of the original complaint. Accordingly, the Court will conduct initial screening of the amended complaint.

With regard to Plaintiff's request for a refund, the original order granting Plaintiff leave to proceed *in forma pauperis* assessed an initial partial filing fee of \$2.92 and required Plaintiff to make monthly payments. According to Plaintiff, the prison collected the \$2.92 initial partial filing fee and two \$10.00 monthly payments from his prisoner account before this Court vacated the order. This Court has confirmed that Plaintiff paid \$22.92 to the Eastern District of Michigan. Plaintiff paid the full \$350.00 filing fee in this Court on July 12, 2010. While it appears that Plaintiff is entitled to a refund of \$22.92 for overpayment of the filing fee, he must seek a refund in the Eastern District of Michigan because that court holds the excess funds. Therefore:

IT IS ORDERED that Plaintiff's motion to proceed with screening of the original complaint (docket #25) is GRANTED IN PART and DENIED IN PART. Plaintiff's request to strike his motion for leave to amend, to add additional defendants and for summary judgment on Counts IV and V (docket #5) is GRANTED. Plaintiff's requests for screening of the original complaint and for a refund of payments in excess of the filing fee are DENIED.

Dated: August 26, 2010

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge